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HOUSE BILL 807

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Donald L. Whitaker

AN ACT

RELATING TO TAXATION; PROVIDING FOR ADMINISTRATIVE REFORMS;
PROVIDING GROUNDS FOR SUSPENSION OR REVOCATION OF PROFESSIONAL
OR OCCUPATIONAL LICENSES; PROVIDING GROUNDS FOR DISBARMENT OR
SUSPENSION OF ATTORNEYS; PERMITTING THE SECRETARY OF TAXATION
AND REVENUE TO ADOPT REGULATIONS FOR PAYMENT OF TAXES AND THE
COMPLETION AND FILING OF TAX RETURNS; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; INCREASING
AND PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is
enacted to read:

"[NEW MATERIAL] DEPARTMENT POWER TO INFORM LICENSING BODY
OF FAILURE TO FILE RETURN OR PAY TAX--GROUNDS FOR REVOCATION OR
SUSPENSION OF LICENSE.--

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1 A. When a licensee does not file the licensee's
2 income tax return or the return of any other state or local tax
3 administered pursuant to the Tax Administration Act for which
4 the licensee is responsible or to pay any settled tax
5 liability, the department may notify the licensing body of the
6 identity of the taxpayer, the taxes involved, the failure to
7 file or to pay and request the body to initiate disciplinary
8 proceedings. If the licensing body initiates disciplinary
9 proceedings, the department may reveal to the body additional
10 relevant information for use in the proceedings.

11 B. For the purposes of this section:

12 (1) "licensee" means a person licensed as an
13 attorney pursuant to Chapter 36, Article 2 NMSA 1978 or
14 licensed pursuant to Chapter 61 NMSA 1978 to engage in a
15 profession or occupation; and

16 (2) "settled tax liability" means a tax
17 liability of the licensee of one thousand dollars (\$1,000) or
18 more established pursuant to any tax or tax act administered
19 pursuant to the Tax Administration Act that has not been
20 protested within the time limits prescribed by Section 7-1-24
21 NMSA 1978 or, if protested, has been decided against the
22 licensee in a decision that either may not be appealed or the
23 time to appeal has expired."

24 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
25 Chapter 248, Section 13, as amended by Laws 2003, Chapter 398,
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1 Section 5 and by Laws 2003, Chapter 439, Section 1) is amended
2 to read:

3 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
4 INFORMATION.--It is unlawful for an employee of the department
5 or a former employee of the department to reveal to [~~an~~
6 ~~individual~~] a person other than another employee of the
7 department information contained in the return of a taxpayer
8 made pursuant to a law subject to administration and
9 enforcement under the provisions of the Tax Administration Act
10 or any other information about a taxpayer acquired as a result
11 of [~~his~~] the employee's employment by the department and not
12 available from public sources, except:

13 A. to an authorized representative of another
14 state; provided that the receiving state has entered into a
15 written agreement with the department to use the information
16 for tax purposes only and that the receiving state has enacted
17 a confidentiality statute similar to this section to which the
18 representative is subject;

19 B. to a representative of the secretary of the
20 treasury or the secretary's delegate pursuant to the terms of a
21 reciprocal agreement entered into with the federal government
22 for exchange of the information;

23 C. to the multistate tax commission or its
24 authorized representative; provided that the information is
25 used for tax purposes only and is disclosed by the multistate

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1 tax commission only to states that have met the requirements of
2 Subsection A of this section;

3 D. to another jurisdiction pursuant to an
4 international fuel tax agreement, provided that the information
5 is used for tax purposes only;

6 [~~D.~~] E. to a district court, an appellate court or
7 a federal court:

8 (1) in response to [~~an~~] a court order
9 [~~thereof~~] in an action relating to taxes to which the state is
10 a party and in which the information sought is about a taxpayer
11 who is party to the action and is material to the inquiry, in
12 which case only that information may be required to be produced
13 in court and admitted in evidence subject to court order
14 protecting the confidentiality of the information and no more;

15 (2) in an action in which the department is
16 attempting to enforce an act with which the department is
17 charged or to collect a tax; or

18 (3) in [~~any~~] a matter in which the department
19 is a party and the taxpayer has put [~~his~~] the taxpayer's own
20 liability for taxes at issue, in which case only that
21 information regarding the taxpayer who is party to the action
22 may be produced, but this shall not prevent the disclosure of
23 department policy or interpretation of law arising from
24 circumstances of a taxpayer who is not a party;

25 [~~E.~~] F. to the taxpayer or to the taxpayer's

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1 authorized representative; provided [~~however~~] that nothing in
2 this subsection shall be construed to require [~~any~~] an employee
3 to testify in a judicial proceeding except as provided in
4 Subsection D of this section;

5 [~~F.~~] G. information obtained through the
6 administration of a law not subject to administration and
7 enforcement under the provisions of the Tax Administration Act
8 to the extent that release of that information is not otherwise
9 prohibited by law;

10 [~~G.~~] H. in a manner, for statistical purposes, that
11 the information revealed is not identified as applicable to an
12 individual taxpayer;

13 [~~H.~~] I. with reference to information concerning
14 the tax on tobacco imposed by Sections 7-12-1 through 7-12-13
15 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of
16 the legislature for a valid legislative purpose or to the
17 attorney general for purposes of Section 6-4-13 NMSA 1978 and
18 the master settlement agreement defined in Section 6-4-12 NMSA
19 1978;

20 [~~I.~~] J. to a transferee, assignee, buyer or lessor
21 of a liquor license, the amount and basis of an unpaid
22 assessment of tax for which [~~his~~] the transferor, assignor,
23 seller or lessee is liable;

24 [~~J.~~] K. to a purchaser of a business as provided in
25 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis

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1 of an unpaid assessment of tax for which the purchaser's seller
2 is liable;

3 ~~[K-]~~ L. to a municipality of this state upon its
4 request for a period specified by that municipality within the
5 twelve months preceding the request for the information by that
6 municipality:

7 (1) the names, taxpayer identification numbers
8 and addresses of registered gross receipts taxpayers reporting
9 gross receipts for that municipality under the Gross Receipts
10 and Compensating Tax Act or a local option gross receipts tax
11 imposed by that municipality. The department may also release
12 the information described in this paragraph quarterly or upon
13 such other periodic basis as the secretary and the municipality
14 may agree; and

15 (2) information indicating whether persons
16 shown on a list of businesses located within that municipality
17 furnished by the municipality have reported gross receipts to
18 the department but have not reported gross receipts for that
19 municipality under the Gross Receipts and Compensating Tax Act
20 or a local option gross receipts tax imposed by that
21 municipality.

22 The employees of municipalities receiving information as
23 provided in this subsection shall be subject to the penalty
24 contained in Section 7-1-76 NMSA 1978 if that information is
25 revealed to individuals other than other employees of the

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1 municipality in question or the department;

2 ~~[L-]~~ M. to the commissioner of public lands for use
3 in auditing that pertains to rentals, royalties, fees and other
4 payments due the state under land sale, land lease or other
5 land use contracts; the commissioner of public lands and
6 employees of the commissioner are subject to the same
7 provisions regarding confidentiality of information as
8 employees of the department;

9 ~~[M-]~~ N. the department shall furnish, upon request
10 by the child support enforcement division of the human services
11 department, the last known address with date of all names
12 certified to the department as being absent parents of children
13 receiving public financial assistance. The child support
14 enforcement division personnel shall use such information only
15 for the purpose of enforcing the support liability of the
16 absent parents and shall not use the information or disclose it
17 for any other purpose; the child support enforcement division
18 and its employees are subject to the provisions of this section
19 with respect to any information acquired from the department;

20 ~~[N-]~~ O. with respect to the tax on gasoline imposed
21 by the Gasoline Tax Act, the department shall make available
22 for public inspection at monthly intervals a report covering
23 the number of gallons of gasoline and ethanol blended fuels
24 received and deducted, and the amount of tax paid by each
25 person required to file a gasoline tax return or pay gasoline

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1 tax in the state of New Mexico;

2 [P-] P. the identity of a rack operator, importer,
3 blender, supplier or distributor and the number of gallons
4 reported on returns required under the Gasoline Tax Act,
5 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
6 rack operator, importer, blender, distributor or supplier, but
7 only when it is necessary to enable the department to carry out
8 its duties under the Gasoline Tax Act, the Special Fuels
9 Supplier Tax Act or the Alternative Fuel Tax Act;

10 [P-] Q. the department shall release upon request
11 only the names and addresses of all gasoline or special fuel
12 distributors, wholesalers and retailers to the New Mexico
13 department of agriculture, the employees of which are thereby
14 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
15 that information is revealed to individuals other than
16 employees of either the New Mexico department of agriculture or
17 the department;

18 [Q-] R. the department shall answer all inquiries
19 concerning whether a person is or is not a registered taxpayer
20 for tax programs that require registration, but nothing in this
21 subsection shall be construed to allow the department to answer
22 inquires concerning whether a person has filed a tax return;

23 [R-] S. upon request of a municipality or county of
24 this state, the department shall permit officials or employees
25 of the municipality or county to inspect the records of the

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1 department pertaining to an increase or decrease to a
2 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
3 1978 for the purpose of reviewing the basis for the increase or
4 decrease. The municipal or county officials or employees
5 receiving information provided in this subsection shall not
6 reveal that information to ~~[any]~~ a person other than another
7 employee of the municipality or the county, the department or a
8 district court, an appellate court or a federal court in a
9 proceeding relating to a disputed distribution and in which
10 both the state and the municipality or county are parties.
11 Information provided pursuant to provisions of this subsection
12 that is revealed other than as provided in this subsection
13 shall subject the person revealing the information to the
14 penalties contained in Section 7-1-76 NMSA 1978;

15 ~~[S-]~~ T. to a county of this state that has in
16 effect a local option gross receipts tax imposed by the county
17 upon its request for a period specified by that county within
18 the twelve months preceding the request for the information by
19 that county:

20 (1) the names, taxpayer identification numbers
21 and addresses of registered gross receipts taxpayers reporting
22 gross receipts either for that county in the case of a local
23 option gross receipts tax imposed on a countywide basis or only
24 for the areas of that county outside of any incorporated
25 municipalities within that county in the case of a county local

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1 option gross receipts tax imposed only in areas of the county
2 outside of any incorporated municipalities. The department may
3 also release the information described in this paragraph
4 quarterly or upon such other periodic basis as the secretary
5 and the county may agree;

6 (2) in the case of a local option gross
7 receipts tax imposed by a county on a countywide basis,
8 information indicating whether persons shown on a list of
9 businesses located within the county furnished by the county
10 have reported gross receipts to the department but have not
11 reported gross receipts for that county under the Gross
12 Receipts and Compensating Tax Act or a local option gross
13 receipts tax imposed by that county on a countywide basis; and

14 (3) in the case of a local option gross
15 receipts tax imposed by a county only on persons engaging in
16 business in that area of the county outside of incorporated
17 municipalities, information indicating whether persons on a
18 list of businesses located in that county outside of the
19 incorporated municipalities but within that county furnished by
20 the county have reported gross receipts to the department but
21 have not reported gross receipts for that county outside of the
22 incorporated municipalities within that county under the Gross
23 Receipts and Compensating Tax Act or a local option gross
24 receipts tax imposed by the county only on persons engaging in
25 business in that county outside of the incorporated

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1 municipalities.

2 The officers and employees of counties receiving
3 information as provided in this subsection shall be subject to
4 the penalty contained in Section 7-1-76 NMSA 1978 if the
5 information is revealed to individuals other than other
6 officers or employees of the county in question or the
7 department;

8 [~~F.~~] U. to authorized representatives of an Indian
9 nation, tribe or pueblo, the territory of which is located
10 wholly or partially within New Mexico, pursuant to the terms of
11 a reciprocal agreement entered into with the Indian nation,
12 tribe or pueblo for the exchange of that information for tax
13 purposes only; provided that the Indian nation, tribe or pueblo
14 has enacted a confidentiality statute similar to this section;

15 [~~U.~~] V. information with respect to the taxes or
16 tax acts administered pursuant to Subsection B of Section 7-1-2
17 NMSA 1978, except that:

18 (1) information for or relating to a period
19 prior to July 1, 1985 with respect to Sections 7-25-1 through
20 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
21 to a committee of the legislature for a valid legislative
22 purpose;

23 (2) except as provided in Paragraph (3) of
24 this subsection, contracts and other agreements between the
25 taxpayer and other parties and the proprietary information

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1 contained in those contracts and agreements shall not be
2 released without the consent of all parties to the contract or
3 agreement; and

4 (3) audit workpapers and the proprietary
5 information contained in the workpapers shall not be released
6 except to:

7 (a) the minerals management service of
8 the United States department of the interior, if production
9 occurred on federal land;

10 (b) a person having a legal interest in
11 the property that is subject to the audit;

12 (c) a purchaser of products severed from
13 a property subject to the audit; or

14 (d) the authorized representative of any
15 of the persons in Subparagraphs (a) through (c) of this
16 paragraph. This paragraph does not prohibit the release of
17 proprietary information contained in the workpapers that is
18 also available from returns or from other sources not subject
19 to the provisions of this section;

20 [~~V.~~] W. information with respect to the taxes,
21 surtaxes, advance payments or tax acts administered pursuant to
22 Subsection C of Section 7-1-2 NMSA 1978;

23 [~~W.~~] X. to the public regulation commission,
24 information with respect to the Corporate Income and Franchise
25 Tax Act required to enable the commission to carry out its

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1 duties;

2 [~~X.~~] Y. to the state racing commission, information
3 with respect to the state, municipal and county gross receipts
4 taxes paid by [~~race tracks~~] racetracks;

5 [~~Y.~~] Z. upon request of a corporation authorized to
6 be formed under the Educational Assistance Act, the department
7 shall furnish the last known address and the date of that
8 address of every person certified to the department as an
9 absent obligor of an educational debt due and owed to the
10 corporation or that the corporation has lawfully contracted to
11 collect. The corporation and its officers and employees shall
12 use that information only to enforce the educational debt
13 obligation of the absent obligors and shall not disclose that
14 information or use it for any other purpose;

15 [~~Z.~~] AA. a decision and order made by a hearing
16 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
17 protest filed with the secretary on or after July 1, 1993;

18 [~~AA.~~] BB. information required by a provision of
19 the Tax Administration Act to be made available to the public
20 by the department;

21 [~~BB.~~] CC. upon request by the Bernalillo county
22 metropolitan court, the department shall furnish the last known
23 address and the date of that address for every person the court
24 certifies to the department as a person who owes fines, fees or
25 costs to the court or who has failed to appear pursuant to a

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1 court order or a promise to appear;

2 [GG-] DD. upon request by a magistrate court, the
3 department shall furnish the last known address and the date of
4 that address for every person the court certifies to the
5 department as a person who owes fines, fees or costs to the
6 court or who has failed to appear pursuant to a court order or
7 a promise to appear;

8 [DD-] EE. to the national tax administration
9 agencies of Mexico and Canada, provided the agency receiving
10 the information has entered into a written agreement with the
11 department to use the information for tax purposes only and is
12 subject to a confidentiality statute similar to this section;

13 [EE-] FF. to a district attorney, a state district
14 court grand jury or federal grand jury for an investigation of
15 or proceeding related to an alleged criminal violation of the
16 tax laws;

17 [FF-] GG. to a third party subject to a subpoena or
18 levy issued pursuant to the provisions of the Tax
19 Administration Act, the identity of the taxpayer involved, the
20 taxes or tax acts involved and the nature of the proceeding;
21 [and]

22 [GG-] HH. to the gaming control board, tax returns
23 of license applicants and their affiliates as defined in
24 Subsection E of Section 60-2E-14 NMSA 1978;

25 II. any written ruling on questions of evidence or

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1 procedure made by a hearing officer pursuant to Section 7-1-24
2 NMSA 1978; provided that the name and identification number of
3 the taxpayer requesting the ruling shall not be disclosed;

4 JJ. to the secretary of labor or the secretary's
5 delegate for use in enforcement of unemployment insurance
6 collections pursuant to the terms of a reciprocal agreement
7 entered into with the secretary of labor for exchange of
8 information; the secretary of labor and employees of the labor
9 department are subject to the provisions regarding
10 confidentiality of information contained in the Tax
11 Administration Act; and

12 KK. information that the department is authorized
13 by the Tax Administration Act to release to a body that
14 licenses professions or occupations pursuant to Chapter 36,
15 Article 2 NMSA 1978 or Chapter 61 NMSA 1978."

16 Section 3. Section 7-1-13 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 18, as amended) is amended to read:

18 "7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF
19 TIME.--

20 A. Taxpayers are liable for tax at the time of and
21 after the transaction or incident giving rise to tax until
22 payment is made. Taxes are due on and after the date on which
23 their payment is required until payment is made.

24 B. Every taxpayer shall, on or before the date on
25 which payment of any tax is due, complete and file a tax return

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1 in a form prescribed and according to the regulations issued by
2 the secretary. Except as provided in Section 7-1-13.1 NMSA
3 1978 or by regulation, ruling, order or instruction of the
4 secretary, the payment of any tax or the filing of any return
5 may be accomplished by mail. The secretary may require the
6 electronic delivery of any return or payment by regulation,
7 ruling, order or instruction.

8 C. If any adjustment is made in the basis for
9 computation of any federal tax as a result of an audit by the
10 internal revenue service or the filing of an amended federal
11 return changing a prior election or making any other change for
12 which federal approval is required by the Internal Revenue
13 Code, the taxpayer affected shall, within ninety days of the
14 internal revenue service audit adjustment or payment of the
15 federal refund, file an amended return with the department.
16 Payment of any additional tax due shall accompany the return.

17 D. Payment of the total amount of all taxes that
18 are due from the taxpayer shall precede or accompany the
19 return. Delivery to the department of a check that is not paid
20 upon presentment does not constitute payment.

21 E. The secretary or the secretary's delegate may,
22 for good cause, extend in favor of a taxpayer or a class of
23 taxpayers, for no more than a total of twelve months, the date
24 on which payment of any tax is required or on which any return
25 required by provision of the Tax Administration Act shall be

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1 filed, but no extension shall prevent the accrual of interest
2 as otherwise provided by law. When an extension of time for
3 income tax has been granted a taxpayer under the Internal
4 Revenue Code, such extension shall serve to extend the time for
5 filing New Mexico income tax provided that a copy of the
6 approved federal extension of time is attached to the
7 taxpayer's New Mexico income tax return, except that the
8 secretary by regulation may also provide for the automatic
9 extension for no more than four months of the date upon which
10 payment of any New Mexico income tax or the filing of any New
11 Mexico income tax return is required. If the secretary or the
12 secretary's delegate believes it necessary to assure the
13 collection of the tax, the secretary or the secretary's
14 delegate may require, as a condition of granting any extension,
15 that the taxpayer furnish security in accordance with the
16 provisions of Section 7-1-54 NMSA 1978."

17 Section 4. Section 7-1-13.1 NMSA 1978 (being Laws 1988,
18 Chapter 99, Section 3, as amended) is amended to read:

19 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

20 A. Payment of the taxes, including any applicable
21 penalties and interest, described in Paragraph (1), (2), ~~(3)~~
22 (3) or (4) of this subsection shall be made on or before the
23 date due in accordance with Subsection B of this section if the
24 taxpayer's average tax payment for the group of taxes during
25 the preceding calendar year equaled or exceeded twenty-five

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1 thousand dollars (\$25,000):

2 (1) Group 1: all taxes due under the
3 Withholding Tax Act, the Gross Receipts and Compensating Tax
4 Act, local option gross receipts tax acts, the Interstate
5 Telecommunications Gross Receipts Tax Act and the Leased
6 Vehicle Gross Receipts Tax Act;

7 (2) Group 2: all taxes due under the Oil and
8 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
9 the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad
10 Valorem Production Tax Act; ~~[or]~~

11 (3) Group 3: the tax due under the Natural
12 Gas Processors Tax Act; or

13 (4) Group 4: all taxes and fees due under the
14 Cigarette Tax Act, the Tobacco Products Tax Act, the Gasoline
15 Tax Act, the Special Fuels Supplier Tax Act, the Petroleum
16 Products Loading Fee Act, the Alternative Fuel Tax Act, the
17 Liquor Excise Tax Act, the Local Liquor Excise Tax Act, the
18 Workers' Compensation Act, the Gaming Control Act, the Enhanced
19 911 Act and the Telecommunications Access Act.

20 For taxpayers who have more than one identification number
21 issued by the department, the average tax payment shall be
22 computed by combining the amounts paid under the several
23 identification numbers.

24 B. Taxpayers who are required to make payment in
25 accordance with the provisions of this section shall make

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1 payment by one or more of the following means on or before the
2 due date so that funds are immediately available to the state
3 on or before the due date:

4 (1) electronic payment; provided that a result
5 of the payment is that funds are immediately available to the
6 state of New Mexico on or before the due date;

7 (2) currency of the United States;

8 (3) check drawn on and payable at any New
9 Mexico financial institution provided that the check is
10 received by the department at the place and time required by
11 the department at least one banking day prior to the due date;
12 or

13 (4) check drawn on and payable at any domestic
14 non-New Mexico financial institution provided that the check is
15 received by the department at the time and place required by
16 the department at least two banking days prior to the due date.

17 C. If the taxes required to be paid under this
18 section are not paid in accordance with Subsection B of this
19 section, the payment is not timely and is subject to the
20 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

21 D. For the purposes of this section, "average tax
22 payment" means the total amount of taxes paid with respect to a
23 group of taxes listed under Subsection A of this section during
24 a calendar year divided by the number of months in that
25 calendar year containing a due date on which the taxpayer was

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1 required to pay one or more taxes in the group."

2 Section 5. Section 7-1-15 NMSA 1978 (being Laws 1969,
3 Chapter 31, Section 1, as amended) is amended to read:

4 "7-1-15. SECRETARY MAY SET TAX REPORTING AND PAYMENT
5 INTERVALS.--The secretary may, pursuant to regulation, allow
6 taxpayers with an anticipated tax liability of less than [~~two~~
7 ~~hundred dollars (\$200)~~] five hundred dollars (\$500) a month to
8 report and pay taxes at intervals which the secretary may
9 specify. However, unless specifically permitted by law, an
10 interval shall not exceed six months. The secretary may also
11 allow direct marketers who have entered into an agreement with
12 the department to collect and remit compensating tax to report
13 and pay on a quarterly or semiannual basis."

14 Section 6. Section 7-1-17 NMSA 1978 (being Laws 1965,
15 Chapter 248, Section 20, as amended) is amended to read:

16 "7-1-17. ASSESSMENT OF TAX--PRESUMPTION OF CORRECTNESS.--

17 A. If the secretary or the secretary's delegate
18 determines that a taxpayer is liable for taxes in excess of
19 [~~ten dollars (\$10.00)~~] twenty-five dollars (\$25.00) that are
20 due and that have not been previously assessed to the taxpayer,
21 the secretary or the secretary's delegate shall promptly assess
22 the amount thereof to the taxpayer.

23 B. Assessments of tax are effective:

24 (1) when a return of a taxpayer is received by
25 the department showing a liability for taxes;

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1 (2) when a document denominated "notice of
2 assessment of taxes", issued in the name of the secretary, is
3 mailed or delivered in person to the taxpayer against whom the
4 liability for tax is asserted, stating the nature and amount of
5 the taxes assertedly owed by the taxpayer to the state,
6 demanding of the taxpayer the immediate payment of the taxes
7 and briefly informing the taxpayer of the remedies available to
8 the taxpayer; or

9 (3) when an effective jeopardy assessment is
10 made as provided in the Tax Administration Act.

11 C. Any assessment of taxes or demand for payment
12 made by the department is presumed to be correct.

13 D. When taxes have been assessed to [~~any~~] a
14 taxpayer and remain unpaid, the secretary or the secretary's
15 delegate may demand payment at any time except as provided
16 otherwise by Section 7-1-19 NMSA 1978."

17 Section 7. Section 7-1-24 NMSA 1978 (being Laws 1965,
18 Chapter 248, Section 26, as amended) is amended to read:

19 "7-1-24. ADMINISTRATIVE HEARING--PROCEDURE.--

20 A. [~~Any~~] A taxpayer may dispute the assessment to
21 the taxpayer of [~~any~~] an amount of tax, the application to the
22 taxpayer of [~~any~~] a provision of the Tax Administration Act or
23 the denial of or failure to either allow or deny a claim for
24 refund made in accordance with Section 7-1-26 NMSA 1978 by
25 filing with the secretary a written protest against the

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1 assessment or against the application to the taxpayer of the
2 provision or against the denial of or the failure to allow or
3 deny the amount claimed to have been erroneously paid as tax.
4 Every protest shall identify the taxpayer and the tax involved
5 and state the grounds for the taxpayer's protest and the
6 affirmative relief requested. The statement of grounds for
7 protest shall specify individual grounds upon which the protest
8 is based and a summary statement of the evidence expected to be
9 produced supporting each ground asserted, if any; provided that
10 the taxpayer may supplement the statement at any time prior to
11 ten days before ~~[any]~~ a hearing conducted on the protest
12 pursuant to Subsection D of this section or, if a scheduling
13 order has been issued, in accordance with the scheduling order.
14 The secretary may, in appropriate cases, provide for an
15 informal conference before setting a hearing of the protest or
16 acting on ~~[any]~~ a claim for refund.

17 B. ~~[Any]~~ A protest by a taxpayer shall be filed
18 within thirty days of the date of the mailing to the taxpayer
19 by the department of the notice of assessment or mailing to, or
20 service upon, the taxpayer of other peremptory notice or
21 demand, or the date of mailing or filing a return. Upon
22 written request of the taxpayer made within the time permitted
23 for filing a protest, the secretary may grant an extension of
24 time, not to exceed sixty days, within which to file the
25 protest. If a protest is not filed within the time required

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1 for filing a protest or, if an extension has been granted,
2 within the extended time, the secretary may proceed to enforce
3 collection of [~~any~~] a tax if the taxpayer is delinquent within
4 the meaning of Section 7-1-16 NMSA 1978. Upon written request
5 of the taxpayer made after the time for filing a protest but
6 not more than sixty days after the expiration of the time for
7 filing a protest, the secretary may grant a retroactive
8 extension of time, not to exceed sixty days, within which to
9 file the protest; provided that the taxpayer demonstrates to
10 the secretary's satisfaction that the taxpayer was not able to
11 file a protest or to request an extension within the time to
12 file the protest and that the grounds for the protest have
13 substantial merit. The fact that the department did not mail
14 the assessment or other peremptory notice or demand by
15 certified or registered mail or otherwise demand and receive
16 acknowledgment of receipt by the taxpayer shall not be deemed
17 to demonstrate the taxpayer's inability to protest or request
18 an extension within the time for filing a protest within the
19 required time. The secretary shall not grant a retroactive
20 extension if a levy has already been served under Section
21 7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been
22 made under Section 7-1-59 NMSA 1978. [~~No~~] Proceedings other
23 than those to enforce collection of [~~any~~] an amount assessed as
24 tax and to protect the interest of the state by injunction, as
25 provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53,

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1 7-1-56 and 7-1-58 NMSA 1978, are not stayed by timely filing of
2 a protest under this section.

3 C. Claims for refund shall be filed as provided for
4 in Section 7-1-26 NMSA 1978.

5 D. Upon timely receipt of a protest, the department
6 or hearing officer shall promptly set a date for hearing and on
7 that date hear the protest or claim.

8 E. A hearing officer shall be designated by the
9 secretary to conduct the hearing. Taxpayers may appear at a
10 hearing for themselves or be represented by a bona fide
11 employee, an attorney, a certified public accountant or a
12 registered public accountant. Hearings shall not be open to
13 the public except upon request of the taxpayer and may be
14 postponed or continued at the discretion of the hearing
15 officer.

16 F. A hearing officer shall not engage or
17 participate in any way as an employee of the department in the
18 areas of enforcement or formulating general tax policy other
19 than to conduct hearings. A taxpayer may request that the
20 secretary determine whether a hearing officer has engaged or
21 participated in tax policy or enforcement in a way that might
22 reasonably be expected to affect the hearing officer's
23 impartiality in a particular matter. The secretary may
24 designate another hearing officer for the matter to avoid
25 actual or apparent prejudice.

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1 G. A hearing officer shall not engage in ex-parte
2 communications concerning the substantive issues of [~~any~~] a
3 matter that has been protested while that matter is still
4 pending. If the secretary finds that a hearing officer has
5 engaged in prohibited ex-parte communications, the secretary
6 shall designate another hearing officer for that matter.

7 H. In hearings before the hearing officer, the
8 technical rules of evidence shall not apply, but in ruling on
9 the admissibility of evidence, the hearing officer may require
10 reasonable substantiation of statements or records tendered,
11 the accuracy or truth of which is in reasonable doubt. A
12 taxpayer may request a written ruling on [~~any~~] a contested
13 question of evidence in a matter in which the taxpayer has
14 filed a written protest and that protest is pending.

15 I. In hearings before the hearing officer, the
16 Rules of Civil Procedure for the District Courts shall not
17 apply unless the taxpayer elects, but the hearing shall be
18 conducted so that both complaints and defenses are amply and
19 fairly presented. To this end, the hearing officer shall hear
20 arguments, permit discovery, entertain and dispose of motions,
21 require written expositions of the case as the circumstances
22 justify and render a decision in accordance with the law and
23 the evidence presented and admitted. A taxpayer may request a
24 written ruling on [~~any~~] a contested question of procedure in a
25 matter in which the taxpayer has filed a written protest and

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1 that protest is pending.

2 J. In the case of the hearing of [~~any~~] a protest,
3 the hearing officer shall make and preserve a complete record
4 of the proceedings. At the beginning of the hearing, the
5 hearing officer shall inform the taxpayer of the taxpayer's
6 right to representation. The hearing officer, within thirty
7 days of the hearing, shall inform the protestant in writing of
8 the decision, informing the protestant at the same time of the
9 right to, and the requirements for perfection of, an appeal
10 from the decision to the court of appeals and of the
11 consequences of a failure to appeal. The written decision
12 shall embody an order granting or denying the relief requested
13 or granting such part thereof as seems appropriate.

14 K. A taxpayer with two or more protests containing
15 related issues may request that such protests be combined and
16 heard jointly. The designated hearing officer shall grant the
17 request to combine protests unless it would create an
18 unreasonable burden on the department.

19 L. Nothing in this section shall be construed to
20 authorize any criminal proceedings hereunder or to authorize an
21 administrative protest of the issuance of a subpoena or
22 summons."

23 Section 8. Section 7-1-26 NMSA 1978 (being Laws 1965,
24 Chapter 248, Section 28, as amended) is amended to read:

25 "7-1-26. CLAIM FOR REFUND.--

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1 A. ~~[Any]~~ A person who believes that an amount of
2 tax has been paid by or withheld from that person in excess of
3 that for which the person was liable, who has been denied ~~[any]~~
4 a credit or rebate claimed or who claims a prior right to
5 property in the possession of the department pursuant to a levy
6 made ~~[under authority of]~~ pursuant to Sections 7-1-31 through
7 7-1-34 NMSA 1978 may claim a refund by directing to the
8 secretary, within the time limited by the provisions of
9 Subsections D, E and F of this section, a written claim for
10 refund. Except as provided in Subsection J of this section, a
11 refund claim shall include the taxpayer's name, address and
12 identification number, the type of tax for which a refund is
13 being claimed, the sum of money being claimed, the period for
14 which overpayment was made and ~~[the basis for the refund. As~~
15 ~~used in this subsection, "basis for the refund" means]~~ a brief
16 statement of the facts and the law on which the claim is based.
17 Upon receipt of a claim for a refund of gross receipts tax,
18 compensating tax, personal income tax for years other than the
19 current tax year or corporate income tax for years other than
20 the current tax year, other than a claim described in
21 Subsection J of this section, the department shall promptly
22 send a notice to the person filing the claim stating that it
23 has received the claim and indicating whether it considers the
24 claim to be complete. The department and the person filing the
25 claim may agree to designate the claim as a protective claim.

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1 B. The secretary or the secretary's delegate may
2 allow the claim in whole or in part or may deny the claim.

3 (1) If the claim is denied in whole or in part
4 in writing, ~~[no]~~ a claim may not be refiled with respect to
5 that which was denied but the person, within ninety days after
6 either the mailing or delivery of the denial of all or any part
7 of the claim, may elect to pursue one ~~[but not more than one]~~
8 of the remedies in Subsection C of this section.

9 (2) For a claim other than a protective claim,
10 if the department has neither granted nor denied any portion of
11 a claim for refund within one hundred twenty days of the date
12 the claim was mailed or delivered to the department, the person
13 may refile it within the time limits set forth in Subsection
14 ~~[E]~~ D of this section or may within ninety days elect to pursue
15 one, but only one, of the remedies in Subsection C of this
16 section.

17 (3) After the expiration of the two hundred
18 ten days from the date the claim was mailed or delivered to the
19 department, ~~[the department may not approve or disapprove the~~
20 ~~claim unless the person has pursued one of the remedies under~~
21 ~~Subsection C of this section]~~ if the person has failed to
22 pursue one of the remedies pursuant to Subsection C of this
23 section, the department may act on the claim; provided that the
24 taxpayer establishes that the claim was filed in a timely
25 manner and that the claim was complete. In the event that the

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1 department approves such a claim after the expiration of more
2 than two hundred ten days from the date the claim was filed,
3 interest shall not be allowed pursuant to Section 7-1-68 NMSA
4 1978. The department shall not act on that claim more than one
5 year from the end of the calendar year in which the claim was
6 filed.

7 (4) For a protective claim, if the department
8 has not acted within one hundred twenty days from either the
9 date of a final decision in the lead case from which appeal may
10 not be taken or the last date on which appeal may be taken when
11 no appeal is taken, any part of the claim not granted or denied
12 is denied.

13 C. A person may elect to pursue one [~~but only one~~]
14 of the remedies in Paragraphs (1) and (2) of this subsection.
15 [~~In any case~~] If a person does timely pursue more than one
16 remedy, the person shall be deemed to have elected the first
17 remedy invoked. The remedies are as follows:

18 (1) the person may direct to the secretary a
19 written protest against the denial of, or failure to either
20 allow or deny the claim or portion [~~thereof~~] of the claim,
21 which shall be set for hearing by a hearing officer designated
22 by the secretary promptly after the receipt of the protest in
23 accordance with the provisions of Section 7-1-24 NMSA 1978, and
24 pursue the remedies of appeal from decisions adverse to the
25 protestant as provided in Section 7-1-25 NMSA 1978; or

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1 (2) the person may commence a civil action in
2 the district court for Santa Fe county by filing a complaint
3 setting forth the circumstance of the claimed overpayment,
4 alleging that on account thereof the state is indebted to the
5 plaintiff in the amount stated, together with any interest
6 allowable, demanding the refund to the plaintiff of that amount
7 and reciting the facts of the claim for refund. The plaintiff
8 or the secretary may appeal from any final decision or order of
9 the district court to the court of appeals.

10 D. Except as otherwise provided in Subsections E
11 and F of this section, ~~[no]~~ a credit or refund of any amount
12 ~~[may]~~ shall not be allowed or made to ~~[any]~~ a person unless as
13 the result of a claim made by that person as provided in this
14 section:

15 (1) within three years of the end of the
16 calendar year in which:

17 (a) the payment was originally due or
18 the overpayment resulted from an assessment by the department
19 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

20 (b) the final determination of value
21 occurs with respect to ~~[any]~~ an overpayment that resulted from
22 a disapproval by ~~[any]~~ an agency of the United States or the
23 state of New Mexico or ~~[any]~~ a court of increase in value of a
24 product subject to taxation under the Oil and Gas Severance Tax
25 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas

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1 Emergency School Tax Act, the Oil and Gas Ad Valorem Production
2 Tax Act or the Natural Gas Processors Tax Act; or

3 (c) property was levied upon pursuant to
4 the provisions of the Tax Administration Act;

5 (2) when an amount of a claim for credit under
6 the provisions of the Investment Credit Act, Laboratory
7 Partnership with Small Business Tax Credit Act, Technology Jobs
8 Tax Credit Act, Capital Equipment Tax Credit Act or similar act
9 or for the rural job tax credit pursuant to Sections 7-2E-1 and
10 7-2E-2 NMSA 1978 or similar credit has been denied, the
11 taxpayer may claim a refund of the credit no later than one
12 year after the date of the denial;

13 (3) when a taxpayer under audit by the
14 department has signed a waiver of the limitation on assessments
15 [~~on or after July 1, 1993~~] pursuant to Subsection F of Section
16 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of
17 the same tax paid for the same period for which the waiver was
18 given, until a date one year after the later of the date of the
19 mailing of an assessment issued pursuant to the audit, the date
20 of the mailing of final audit findings to the taxpayer or the
21 date a proceeding is begun in court by the department with
22 respect to the same tax and the same period;

23 (4) if the payment of an amount of tax was not
24 made within three years of the end of the calendar year in
25 which the original due date of the tax or date of the

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1 assessment of the department occurred, a claim for refund of
2 that amount of tax can be made within one year of the date on
3 which the tax was paid; or

4 (5) when a taxpayer has been assessed a
5 tax [~~on or after July 1, 1993 under~~] pursuant to Subsection B,
6 C or D of Section 7-1-18 NMSA 1978 and when the assessment
7 applies to a period ending at least three years prior to the
8 beginning of the year in which the assessment was made, the
9 taxpayer may claim a refund for the same tax for the period of
10 the assessment or for any period following that period within
11 one year of the date of the assessment unless a longer period
12 for claiming a refund is provided in this section.

13 E. [~~No~~] A credit or refund shall not be allowed or
14 made to [~~any~~] a person claiming a refund of gasoline tax under
15 Section 7-13-11 NMSA 1978 unless notice of the destruction of
16 the gasoline was given the department within thirty days of the
17 actual destruction and the claim for refund is made within six
18 months of the date of destruction. [~~No~~] A credit or refund
19 shall not be allowed or made to [~~any~~] a person claiming a
20 refund of gasoline tax under Section 7-13-17 NMSA 1978 unless
21 the refund is claimed within six months of the date of purchase
22 of the gasoline and the gasoline has been used at the time the
23 claim for refund is made.

24 F. If, as a result of an audit by the internal
25 revenue service or the filing of an amended federal return

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1 changing a prior election or making any other change for which
2 federal approval is required by the Internal Revenue Code,
3 [~~any~~] an adjustment of federal tax is made with the result that
4 there would have been an overpayment of tax if the adjustment
5 to federal tax had been applied to the taxable period to which
6 it relates, claim for credit or refund of only that amount
7 based on the adjustment may be made as provided in this section
8 within one year of the date of the internal revenue service
9 audit adjustment or payment of the federal refund or within the
10 period limited by Subsection D of this section, whichever
11 expires later. Interest computed at the rate specified in
12 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on
13 any such claim for refund from the date one hundred twenty days
14 after the claim is made until the date the final decision to
15 grant the credit or refund is made.

16 G. If as a result of an audit by the department or
17 a managed audit covering multiple periods an overpayment of tax
18 is found in any period under the audit, that overpayment may be
19 credited against an underpayment of the same tax found in
20 another period under audit pursuant to Section 7-1-29 NMSA
21 1978, provided that the taxpayer files a claim for refund for
22 the overpayments identified in the audit.

23 H. Any refund of tax paid under any tax or tax act
24 administered under Subsection B of Section 7-1-2 NMSA 1978 may
25 be made, at the discretion of the department, in the form of

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1 credit against future tax payments if future tax liabilities in
2 an amount at least equal to the credit amount reasonably may be
3 expected to become due.

4 I. For the purposes of this section, the term "oil
5 and gas tax return" means a return reporting tax due with
6 respect to oil, natural gas, liquid hydrocarbons or carbon
7 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
8 and Gas Conservation Tax Act, the Oil and Gas Emergency School
9 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
10 Natural Gas Processors Tax Act or the Oil and Gas Production
11 Equipment Ad Valorem Tax Act.

12 J. The filing of a fully completed original income
13 tax return, corporate income tax return, corporate income and
14 franchise tax return, estate tax return or special fuel excise
15 tax return that shows a balance due the taxpayer or a fully
16 completed amended income tax return, an amended corporate
17 income tax return, an amended corporate income and franchise
18 tax return, an amended estate tax return, an amended special
19 fuel excise tax return or an amended oil and gas tax return
20 that shows a lesser tax liability than the original return
21 constitutes the filing of a claim for refund for the difference
22 in tax due shown on the original and amended returns.

23 K. For the purposes of this section:

24 (1) "protective claim" means a claim for a
25 refund filed by a person asserting that the person's

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1 entitlement to a refund will be established by a final decision
2 of a New Mexico court of competent jurisdiction on a claim for
3 a refund or protest previously filed by that person or another;
4 and

5 (2) "lead case" means the previously filed
6 claim or protest described in Paragraph (1) of this subsection.

7 L. Disposition of a protective claim shall be
8 postponed until a final decision is reached in the lead case."

9 Section 9. Section 7-1-29 NMSA 1978 (being Laws 1965,
10 Chapter 248, Section 31, as amended by Laws 2003, Chapter 398,
11 Section 11 and by Laws 2003, Chapter 439, Section 4) is amended
12 to read:

13 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

14 A. In response to a claim for refund made as
15 provided in Section 7-1-26 NMSA 1978, but before a court
16 acquires jurisdiction of the matter, the secretary or the
17 secretary's delegate may authorize the refund to a person of
18 the amount of any overpayment of tax determined by the
19 secretary or the secretary's delegate to have been erroneously
20 made by the person, together with allowable interest. A refund
21 of tax and interest erroneously paid and amounting to more than
22 ten thousand dollars (\$10,000) may be made to a person only
23 with the prior approval of the attorney general, except that
24 the secretary or the secretary's delegate may make refunds with
25 respect to:

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1 (1) the Oil and Gas Severance Tax Act, the Oil
2 and Gas Conservation Tax Act, the Oil and Gas Emergency School
3 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
4 Natural Gas Processors Tax Act or the Oil and Gas Production
5 Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA 1978 and the
6 Cigarette Tax Act without the prior approval of the attorney
7 general regardless of the amount; and

8 (2) the Corporate Income and Franchise Tax Act
9 amounting to less than twenty thousand dollars (\$20,000)
10 without the prior approval of the attorney general.

11 B. Pursuant to the final order of the district
12 court, the court of appeals, the supreme court of New Mexico or
13 a federal court, from which order, appeal or review is not
14 successfully taken, adjudging that a person has made an
15 overpayment of tax, the secretary shall authorize the refund to
16 the person of the amount thereof.

17 C. In the discretion of the secretary, any amount
18 of tax to be refunded may be offset against any amount of tax
19 for which the person due to receive the refund is liable. The
20 secretary or the secretary's delegate shall give notice to the
21 taxpayer that the refund will be made in this manner, and the
22 taxpayer shall be entitled to interest under Section 7-1-68
23 NMSA 1978 until the tax liability is credited with the refund
24 amount.

25 D. In an audit by the department or a managed audit

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1 covering multiple reporting periods where both underpayments
2 and overpayments of a tax have been made in different reporting
3 periods, the department shall credit the tax overpayments
4 against the underpayments, provided that the taxpayer files a
5 claim for refund of the overpayments. An overpayment shall be
6 applied as a credit first to the earliest underpayment and then
7 to succeeding underpayments. An underpayment of tax to which
8 an overpayment is credited pursuant to this section shall be
9 deemed paid in the period in which the overpayment was made or
10 the period to which the overpayment was credited against an
11 underpayment, whichever is later. If the overpayments credited
12 pursuant to this section exceed the underpayments of a tax, the
13 amount of the net overpayment for the periods covered in the
14 audit shall be refunded to the taxpayer.

15 E. When a taxpayer makes a payment identified to a
16 particular return or assessment, and the department determines
17 that the payment exceeds the amount due pursuant to that return
18 or assessment, the secretary may apply the excess to the
19 taxpayer's other liabilities under the tax acts to which the
20 return or assessment applies, without requiring the taxpayer to
21 file a claim for a refund. The liability to which an
22 overpayment is applied pursuant to this section shall be deemed
23 paid in the period in which the overpayment was made or the
24 period to which the overpayment was applied, whichever is
25 later.

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1 F. If the department determines, upon review of an
2 original or amended income tax return, corporate income and
3 franchise tax return, estate tax return, special fuels excise
4 tax return or oil and gas tax return, that there has been an
5 overpayment of tax for the taxable period to which the return
6 or amended return relates in excess of the amount due to be
7 refunded to the taxpayer under the provisions of Subsection J
8 of Section 7-1-26 NMSA 1978, the department may refund that
9 excess amount to the taxpayer without requiring the taxpayer to
10 file a refund claim.

11 G. Records of refunds and credits made in excess of
12 ten thousand dollars (\$10,000) shall be available for
13 inspection by the public. The department shall keep such
14 records for a minimum of three years from the date of the
15 refund or credit."

16 Section 10. Section 7-1-32 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 34, as amended) is amended to read:

18 "7-1-32. CONTENTS OF WARRANT OF LEVY.--A warrant of levy
19 shall:

20 A. bear on its face a statement of the authority
21 for its service and compelling compliance with its terms, shall
22 be attested by the secretary or the secretary's delegate and
23 shall bear the seal of the department;

24 B. identify the taxpayer whose liability for taxes
25 is sought to be enforced, the amount thereof and the date or

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1 approximate date on which the tax became due;

2 C. order the person on whom it is served to reveal
3 the amount of property or rights to property in his own
4 possession that belong to the taxpayer and the extent of his
5 own interest therein and to reveal the amount and kind of
6 property or rights to property of the taxpayer that are, to the
7 best of his knowledge, in the possession of others;

8 D. order the person on whom it is served to
9 surrender the property forthwith but may allow him to agree in
10 writing to surrender the property or the proceeds therefrom on
11 a certain date in the future when the taxpayer's right to it
12 would otherwise mature;

13 E. order the employer of the taxpayer to surrender
14 wages or salary of the taxpayer in excess of the amount exempt
15 under Section 7-1-36 NMSA 1978 owed by the employer to the
16 taxpayer at the time of service of the levy and which may
17 become owing by the employer to the taxpayer subsequent to the
18 service of the levy until the full amount of the liability
19 stated on the levy is satisfied or until notified by the
20 secretary or the secretary's delegate;

21 F. state on its face the penalties for willful
22 failure by any person upon whom it is served to comply with its
23 terms; and

24 G. state that the state of New Mexico claims a lien
25 for the entire amount of tax asserted to be due, including

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1 applicable interest and penalties."

2 Section 11. Section 7-1-58 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 59, as amended) is amended to read:

4 "7-1-58. PERMANENCE OF TAX DEBT--CIVIL ACTIONS TO COLLECT
5 TAX.--The total amount of all taxes due and assessed is a
6 personal debt of the taxpayer to the state of New Mexico until
7 paid and may be collected by civil action to that end commenced
8 subject to the limitations in Section 7-1-19 NMSA 1978 by the
9 secretary or attorney general in district court or in federal
10 courts. Final judgments, orders or decrees for taxes may be
11 enforced in appropriate courts of other states by the secretary
12 or the attorney general pursuant to agreement between the other
13 state and this state or by attorneys or other agents in that
14 state retained by the department or the attorney general.

15 [~~This remedy is~~] Final judgments, orders or decrees may be
16 enforced within this state or other states by other agents
17 retained by the department or the attorney general for that
18 purpose. Those remedies are in addition to any other remedy
19 provided by law."

20 Section 12. Section 7-1-67 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 68, as amended) is amended to read:

22 "7-1-67. INTEREST ON DEFICIENCIES.--

23 A. If a tax imposed is not paid on or before the
24 day on which it becomes due, interest shall be paid to the
25 state on that amount from the first day following the day on

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1 which the tax becomes due, without regard to any extension of
2 time or installment agreement, until it is paid, except that:

3 (1) for income tax imposed on a member of the
4 armed services of the United States serving in a combat zone
5 under orders of the president of the United States, interest
6 shall accrue only for the period beginning the day after any
7 applicable extended due date if the tax is not paid;

8 (2) if the amount of interest due at the time
9 payment is made is less than one dollar (\$1.00), then no
10 interest shall be due;

11 (3) if demand is made for payment of a tax,
12 including accrued interest, and if the tax is paid within ten
13 days after the date of the demand, no interest on the amount
14 paid shall be imposed for the period after the date of the
15 demand;

16 (4) if a managed audit is completed by the
17 taxpayer on or before the date required, as provided in the
18 agreement for the managed audit, and payment of any tax found
19 to be due is made [~~in full~~] within thirty days of the date the
20 secretary has mailed or delivered an assessment for the tax to
21 the taxpayer, no interest shall be due on the assessed tax;

22 (5) when, as the result of an audit or a
23 managed audit, an overpayment of a tax is credited against an
24 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,
25 interest shall accrue from the date the tax was due until the

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1 tax is deemed paid;

2 (6) if the department does not issue an
3 assessment for the tax program and period within the time
4 provided in Subsection D of Section 7-1-11.2 NMSA 1978,
5 interest shall be paid from the first day following the day on
6 which the tax becomes due until the tax is paid, excluding the
7 period between either:

8 (a) the one hundred eightieth day after
9 giving a notice of outstanding records or books of account and
10 the date of the assessment of the tax; or

11 (b) the ninetieth day after the
12 expiration of the additional time requested by the taxpayer to
13 comply, if such request was granted, and the date of the
14 assessment of the tax; and

15 (7) if the taxpayer was not provided with
16 proper notices as required in Section 7-1-11.2 NMSA 1978,
17 interest shall be paid from the first day following the day on
18 which the tax becomes due until the tax is paid, excluding the
19 period between one hundred eighty days prior to the date of
20 assessment and the date of assessment.

21 B. Interest due to the state under Subsection A or
22 [D] E of this section shall be at the rate of fifteen percent a
23 year, computed on a daily basis [~~provided that~~].

24 C. If a different rate than the rate established by
25 Subsection B of this section is specified by a compact or other

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1 interstate agreement to which New Mexico is a party, ~~[that]~~ the
2 rate specified by the compact or other agreement shall be
3 applied to amounts due under the compact or other agreement.

4 ~~[G.]~~ D. Nothing in this section shall be construed
5 to impose interest on interest or interest on the amount of any
6 penalty.

7 ~~[D.]~~ E. If ~~[any]~~ a tax required to be paid in
8 accordance with Section 7-1-13.1 NMSA 1978 is not paid in the
9 manner required by that section, interest shall be paid to the
10 state on the amount required to be paid in accordance with
11 Section 7-1-13.1 NMSA 1978. If interest is due under this
12 subsection and is also due under Subsection A of this section,
13 interest shall be due and collected only pursuant to Subsection
14 A of this section."

15 Section 13. Section 7-1-68 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 69, as amended by Laws 2003, Chapter 2,
17 Section 1 and by Laws 2003, Chapter 439, Section 6) is amended
18 to read:

19 "7-1-68. INTEREST ON OVERPAYMENTS.--

20 A. As provided in this section, interest shall be
21 allowed and paid on the amount of tax overpaid by a person that
22 is subsequently refunded or credited to that person.

23 B. Interest on overpayments of tax shall accrue and
24 be paid at the rate of fifteen percent a year, computed on a
25 daily basis ~~[provided that]~~.

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1 C. If a different rate than the rate established by
2 Subsection B of this section is specified by a compact or other
3 interstate agreement to which New Mexico is a party, [~~that~~] the
4 rate specified by the compact or other agreement shall apply to
5 amounts due under the compact or other agreement.

6 ~~[C.]~~ D. Unless otherwise provided by this section,
7 interest on an overpayment not arising from an assessment by
8 the department shall be paid from the date of the claim for
9 refund until a date preceding by not more than thirty days the
10 date of the credit or refund to any person; interest on an
11 overpayment arising from an assessment by the department shall
12 be paid from the date of overpayment until a date preceding by
13 not more than thirty days the date of the credit or refund to
14 any person.

15 ~~[D.]~~ E. No interest shall be allowed or paid with
16 respect to an amount credited or refunded if:

17 (1) the amount of interest due is less than
18 one dollar (\$1.00);

19 (2) the credit or refund is made within:

20 (a) fifty-five days of the date of the
21 claim for refund of income tax, pursuant to either the Income
22 Tax Act or the Corporate Income and Franchise Tax Act for the
23 tax year immediately preceding the tax year in which the claim
24 is made; or

25 (b) seventy-five days of the date of the

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1 claim for refund of gasoline tax to users of gasoline off the
2 highways;

3 (3) the credit or refund is made within one
4 hundred twenty days of the date of the claim for refund of
5 income tax, pursuant to the Income Tax Act or the Corporate
6 Income and Franchise Tax Act, for any tax year more than one
7 year prior to the year in which the claim is made;

8 (4) Sections 6611(f) and 6611(g) of the
9 Internal Revenue Code, as those sections may be amended or
10 renumbered, prohibit payment of interest for federal income tax
11 purposes;

12 (5) the credit or refund is made within sixty
13 days of the date of the claim for refund of any tax other than
14 income tax;

15 (6) the credit results from overpayments found
16 in an audit of multiple reporting periods and applied to
17 underpayments found in that audit or refunded as a net
18 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
19 1978;

20 (7) the department applies the credit or
21 refund to an intercept program, to the taxpayer's estimated
22 payment prior to the due date for the estimated payment, or to
23 offset prior liabilities of the taxpayer pursuant to Subsection
24 E of Section 7-1-29 NMSA 1978; [øø]

25 (8) the credit or refund results from

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1 overpayments the department finds pursuant to Subsection F of
2 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
3 taxpayer on the return;

4 (9) the credit or refund is in settlement of a
5 protective claim, as defined in Section 7-1-26 NMSA 1978;
6 provided that interest shall be paid with respect to the period
7 from the date of the final unappealable decision in the lead
8 case until a date preceding by not more than thirty days the
9 date the credit or refund is paid on the protective claim; or

10 (10) the department acts to grant the credit
11 or refund pursuant to Paragraph (3) of Subsection B of Section
12 7-1-26 NMSA 1978.

13 ~~[E.]~~ F. Nothing in this section shall be construed
14 to require the payment of interest upon interest."

15 Section 14. Section 7-1-69 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 70, as amended) is amended to read:

17 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
18 RETURN.--

19 A. Except as provided in Subsection C of this
20 section, in the case of failure due to negligence or disregard
21 of department ~~[rules and]~~ regulations, but without intent to
22 evade or defeat a tax, to pay when due the amount of tax
23 required to be paid, to pay in accordance with the provisions
24 of Section 7-1-13.1 NMSA 1978 when required to do so or to file
25 by the date required a return regardless of whether a tax is

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1 due, there shall be added to the amount assessed a penalty in
2 an amount equal to the greater of:

3 (1) two percent per month or any fraction of a
4 month from the date the tax was due multiplied by the amount of
5 tax due but not paid, not to exceed ten percent of the tax due
6 but not paid;

7 (2) two percent per month or any fraction of a
8 month from the date the return was required to be filed
9 multiplied by the tax liability established in the late return,
10 not to exceed ten percent of the tax liability established in
11 the late return; or

12 (3) a minimum of [~~five dollars (\$5.00)~~]
13 twenty-five dollars (\$25.00), but the [~~five-dollar (\$5.00)~~]
14 minimum penalty shall not apply to taxes levied under the
15 Income Tax Act or taxes administered by the department pursuant
16 to Subsection B of Section 7-1-2 NMSA 1978.

17 B. [~~No~~] A penalty shall not be assessed against a
18 taxpayer if the failure to pay an amount of tax when due
19 results from a mistake of law made in good faith and on
20 reasonable grounds.

21 C. If a different penalty is specified in a compact
22 or other interstate agreement to which New Mexico is a party,
23 the penalty provided in the compact or other interstate
24 agreement shall be applied to amounts due under the compact or
25 other interstate agreement at the rate and in the manner

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1 prescribed by the compact or other interstate agreement.

2 D. In the case of failure, with willful intent to
3 evade or defeat a tax, to pay when due the amount of tax
4 required to be paid, there shall be added to the amount fifty
5 percent of the tax or a minimum of [~~twenty-five dollars~~
6 ~~(\$25.00)~~] one hundred fifty dollars (\$150), whichever is
7 greater, as penalty.

8 E. If demand is made for payment of a tax,
9 including penalty imposed pursuant to this section, and if the
10 tax is paid within ten days after the date of such demand, no
11 penalty shall be imposed for the period after the date of the
12 demand with respect to the amount paid.

13 F. If a taxpayer makes electronic payment of a tax
14 but the payment does not include all of the information
15 required by the department pursuant to the provisions of
16 Section 7-1-13.1 NMSA 1978 and if the department does not
17 receive the required information within five business days from
18 the later of the date a request by the department for that
19 information is received by the taxpayer or the due date, the
20 taxpayer shall be subject to a penalty of two percent per month
21 or any fraction of a month from the fifth day following the
22 date the request is received. If a penalty is imposed under
23 Subsection A of this section with respect to the same
24 transaction for the same period, [~~no~~] a penalty shall not be
25 imposed under this subsection.

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- 1 G. ~~[No]~~ A penalty shall not be imposed on:
2 (1) tax due in excess of tax paid in
3 accordance with an approved estimated basis pursuant to Section
4 7-1-10 NMSA 1978;
5 (2) tax due as the result of a managed audit;
6 or
7 (3) tax that is deemed paid by crediting
8 overpayments found in an audit or managed audit of multiple
9 periods pursuant to Section 7-1-29 NMSA 1978."

10 Section 15. Section 7-1-70 NMSA 1978 (being Laws 1965,
11 Chapter 248, Section 71, as amended) is amended to read:

12 "7-1-70. CIVIL PENALTY FOR BAD CHECKS.--If any payment
13 required to be made by provision of the Tax Administration Act
14 is attempted to be made by check that is not paid upon
15 presentment, such dishonor is presumptive of negligence. The
16 penalty shall never be less than [~~ten dollars (\$10.00)~~] twenty-
17 five dollars (\$25.00). This penalty is in addition to any
18 other penalty imposed by law."

19 Section 16. Section 7-1-71.1 NMSA 1978 (being Laws 1985,
20 Chapter 65, Section 19, as amended) is amended to read:

21 "7-1-71.1. TAX RETURN PREPARERS--REQUIREMENTS--
22 PENALTIES.--

- 23 A. The secretary may:
24 (1) require by regulation [~~any~~] a tax return
25 preparer with respect to any return of income tax or claim for

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1 refund with respect to income tax to sign [~~such~~] that return or
2 claim for refund;

3 [~~B. The secretary may~~] (2) require by
4 regulation [~~any~~] a tax return preparer with respect to any
5 return of income tax or claim for refund with respect to income
6 tax to furnish the tax return preparer's identification number
7 on such return or claim for refund; and

8 (3) adopt regulations that contain
9 requirements for the form and manner in which a tax preparer
10 must complete or file a return of income tax or claim for
11 refund that is filed for a taxable year beginning on or after
12 January 1, 2005.

13 [~~C. Any~~] B. A tax return preparer with respect to
14 any return of income tax or claim for refund with respect to
15 income tax who is required by regulations promulgated by the
16 secretary to sign a return or claim for refund or to furnish an
17 identification number on such return or claim for refund and
18 who fails to sign such return or claim for refund or to furnish
19 an identification number on such return or claim for refund
20 shall pay a penalty of twenty-five dollars (\$25.00) for such
21 failure unless it is shown that such failure is due to
22 reasonable cause and not due to willful neglect.

23 C. A tax return preparer shall pay a penalty of
24 five dollars (\$5.00) for each return that the tax return
25 preparer files and that does not comply with a regulation

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1 issued by the secretary for the form and manner in which a
2 return of income tax or claim for refund is completed.

3 D. ~~Any~~ A tax return preparer who endorses or
4 otherwise negotiates, either directly or through an agent, any
5 warrant in respect of the Income Tax Act issued to a taxpayer,
6 other than the tax return preparer, shall pay a penalty of five
7 hundred dollars (\$500) with respect to each such warrant;
8 provided that the provisions of this subsection shall not apply
9 with respect to the deposit by a bank, savings and loan
10 association, credit union or other financial corporation of the
11 full amount of the warrant in the taxpayer's account for the
12 benefit of the taxpayer.

13 E. For the purposes of this section, any penalty
14 determined to be due shall be considered to be tax due."

15 Section 17. Section 9-11-6.2 NMSA 1978 (being Laws 1995,
16 Chapter 31, Section 3) is amended to read:

17 "9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS,
18 INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS.--

19 A. The secretary is empowered and directed to issue
20 and file as required by law all regulations, rulings,
21 instructions or orders necessary to implement and enforce any
22 provision of any law the administration and enforcement of
23 which the department, the secretary, any division of the
24 department or any director of any division of the department is
25 charged, including all ~~rules and~~ regulations necessary by

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1 reason of any alteration of any such law. In order to
2 accomplish its purpose, this provision is to be liberally
3 construed.

4 B. Directives issued by the secretary shall be in
5 form substantially as follows:

6 (1) regulations shall be written statements of
7 the secretary of general application, interpreting and
8 exemplifying or implementing the [~~statues~~] statutes to which
9 they relate and may be issued in response to a request from a
10 taxpayer or other interested party;

11 (2) rulings shall be written statements of the
12 secretary, of limited application to one or a small number of
13 persons, interpreting the statutes to which they relate,
14 ordinarily issued in response to a request for clarification of
15 the consequences of a specified set of circumstances;

16 (3) orders shall be written statements of the
17 secretary or a hearing officer or other delegate of the
18 secretary to implement a decision after a hearing; and

19 (4) instructions shall be other written
20 statements or directives of the secretary or secretary's
21 delegate not dealing with the merits of any law but otherwise
22 in aid of the accomplishment of the duties of the secretary.

23 C. To be effective, any ruling or regulation issued
24 by the secretary shall be reviewed by the attorney general or
25 other legal counsel of the department prior to being filed as

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1 required by law, and the fact of the review shall be indicated
2 on the ruling or regulation.

3 D. To be effective, a regulation shall first be
4 issued as a proposed regulation and filed for public inspection
5 in the office of the secretary. Unless otherwise provided by
6 statute, no regulation affecting any person or agency outside
7 the department shall be adopted, amended or repealed without a
8 public hearing on the proposed action before the secretary or a
9 hearing officer designated by the secretary. The public
10 hearing shall be held in Santa Fe unless otherwise permitted by
11 statute. Notice of the subject matter of the regulation, the
12 action proposed to be taken, the time and place of the hearing,
13 the manner in which interested parties may present their views
14 and the method by which copies of the proposed regulation,
15 proposed amendment or repeal of an existing regulation may be
16 obtained shall be published at least thirty days prior to the
17 hearing date in [a] the New Mexico register and mailed at least
18 thirty days prior to the hearing date to all persons who have
19 made a written request for advance notice of hearing. After
20 the proposed regulation has been on file for not less than
21 sixty days and a public hearing on the proposed action has been
22 held by the secretary or a hearing officer designated by the
23 secretary, the secretary may issue it as a final regulation by
24 signing the regulation and filing the regulation in the manner
25 required by law. The secretary shall not delegate the

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1 authority to sign regulations.

2 E. In addition to filing copies of regulations with
3 the state records center as required by law, the secretary
4 shall maintain in the office of the secretary a duplicate
5 official set of current and superseded regulations, a set of
6 current and superseded rulings and such additional sets of
7 those regulations and rulings as appear necessary, which
8 duplicate or additional sets shall be available for inspection
9 by the public, but superseded regulations need be maintained
10 for no longer than ten years from the date of supersession.

11 F. The secretary shall develop and maintain a file
12 of names and addresses of individuals and professional and
13 industry groups having an interest in the promulgation of new,
14 revised or proposed regulations. At convenient times, the
15 secretary shall distribute to these persons all such
16 regulations and all pertinent rulings, making such charges as
17 will defray the expense incurred in their physical preparation
18 and mailing. Such charges are appropriated to the department
19 to defray the costs of preparing and distributing regulations
20 and rulings.

21 G. Any regulation, ruling, instruction or order
22 issued by the secretary or order or instruction issued by a
23 hearing officer or other delegate of the secretary is presumed
24 to be a proper implementation of the provisions of the laws
25 that are charged to the department, the secretary, any division

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1 of the department or any director of any division of the
2 department.

3 H. The extent to which regulations, rulings and
4 orders will have retroactive effect shall be stated and, if no
5 such statement is made, they will be applied prospectively
6 only."

7 Section 18. Section 36-2-18 NMSA 1978 (being Laws 1909,
8 Chapter 53, Section 34, as amended) is amended to read:

9 "36-2-18. GROUNDS FOR DISBARMENT AND SUSPENSION BY THE
10 SUPREME COURT.--[~~SEC. 35.~~]

11 A. An attorney may be disbarred or suspended by the
12 supreme court for any of the following causes arising after his
13 admission to practice:

14 (1) [~~his~~] conviction of a felony or
15 misdemeanor involving moral turpitude, in which case the record
16 of conviction is conclusive;

17 (2) [~~Wilful~~] willful disobedience or violation
18 of an order of the court requiring [~~him~~] the attorney to do or
19 forbear an act connected with or in the course of [~~his~~] the
20 profession of the attorney and any violation of the oath taken
21 by [~~him~~] the attorney or of [~~his~~] the duty [~~as such~~] of an
22 attorney as [~~before~~] provided in [~~this~~] Chapter 36 NMSA 1978;

23 (3) corruptly or [~~wilfully~~] willfully and
24 without authority appearing as attorney for a party to an
25 action or proceeding;

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1 (4) lending [~~his~~] the name of the attorney to
2 be used as an attorney by another party who is not an attorney;

3 (5) failing or refusing to account for money
4 of [~~his~~] a client coming into [~~his~~] the hands [~~as~~] of such
5 attorney;

6 (6) failing to file a state income tax return
7 or any other state or local tax return for which the attorney
8 is responsible or failing to pay a settled tax liability owed
9 by the attorney; or

10 [~~(6)~~] (7) for any other act to which such a
11 consequence is [~~by law~~] attached by law.

12 B. For the purposes of this section, "settled tax
13 liability" means:

14 (1) for taxes and tax acts administered
15 pursuant to the Tax Administration Act, a tax liability of the
16 licensee of one thousand dollars (\$1,000) or more established
17 under any tax or tax act administered under the Tax
18 Administration Act that has not been protested within the time
19 limits prescribed by Section 7-1-24 NMSA 1978 or, if protested,
20 has been decided against the licensee in a decision that either
21 may not be appealed or the time to appeal has expired; or

22 (2) for taxes and tax acts not administered
23 pursuant to the Tax Administration Act, a tax liability of at
24 least five hundred dollars (\$500) that the licensee has not
25 contested by an available administrative or judicial procedure

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1 within prescribed time limits or, if contested, has been
2 decided against the licensee in a decision that either may not
3 be appealed or the time to appeal has expired."

4 Section 19. A new section of the Uniform Licensing Act is
5 enacted to read:

6 "[NEW MATERIAL] GROUNDS FOR SUSPENSION OR REVOCATION OF
7 LICENSE.--

8 A. In addition to grounds specified in any other
9 article of Chapter 61 NMSA 1978 or grounds specified by action
10 of a board, the failure or refusal of a licensee to file the
11 licensee's income tax return or other state or local tax return
12 for which the licensee is responsible or to pay a settled tax
13 liability owed by the licensee is grounds for the revocation or
14 suspension of the licensee's license. Discovery of the failure
15 or refusal shall be deemed to occur on the date the board is
16 notified of the failure or refusal by the agency responsible
17 for administering the tax.

18 B. For the purposes of this section, "settled tax
19 liability" means:

20 (1) for taxes and tax acts administered
21 pursuant to the Tax Administration Act, a tax liability of the
22 licensee of one thousand dollars (\$1,000) or more established
23 under any tax or tax act administered under the Tax
24 Administration Act that has not been protested within the time
25 limits prescribed by Section 7-1-24 NMSA 1978 or, if protested,

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1 has been decided against the licensee in a decision that either
2 may not be appealed or the time to appeal has expired; or

3 (2) for taxes and tax acts not administered
4 pursuant to the Tax Administration Act, a tax liability of at
5 least five hundred dollars (\$500) that the licensee has not
6 contested by an available administrative or judicial procedure
7 within prescribed time limits or, if contested, has been
8 decided against the licensee in a decision that either may not
9 be appealed or the time to appeal has expired."

10 Section 20. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2005.